

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LOLA and MICHAEL BOUCHARD, wife and
husband,

Plaintiffs,

v.

CBS CORPORATION, et al.

Defendants.

NO. 2:11- cv-00458 RAJ

DECLARATION OF PETER D. BALCH
IN OPPOSITION TO PLAINTIFFS'
MOTION TO REMAND

DECLARATION OF PETER D. BALCH

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2 1. I am over the age of eighteen (18) and am competent to testify to the matters
3 herein based on my personal knowledge. To the extent I do not have personal knowledge of
4 these matters, my statements are grounded in information and belief based on my review of
5 documents and understanding of government practices and the practices of Lockheed
6 Shipbuilding Company.

7 2. I am currently the General Counsel of Lockheed Martin Mission Systems &
8 Sensors in Moorestown, New Jersey. From October 1985 until about September 1988, I was
9 counsel at Lockheed Shipbuilding Company in Seattle, Washington. As one of my
10 responsibilities for Lockheed Shipbuilding Company, I reviewed various government contracts
11 and Military specifications.

12 3. During the 1970s, Lockheed Shipbuilding Company (including its predecessor
13 companies) constructed and repaired various vessels for both the U.S. Government and other non-
14 federal entities. Lockheed Shipbuilding Company also entered into procurement contracts with the
15 U.S. Government for the construction of various military vessels, including three naval submarine
16 tenders known as AS 39, AS 40, and AS 41 (which later became known as USS EMORY LAND, USS
17 FRANK CABLE, and USS McKee, respectively). All government procurement contracts for naval
18 vessels, including the three vessels identified above, mandated that Lockheed Shipbuilding Company
19 construct the vessels in strict compliance with specifications issued by the United States Navy and
20 incorporated by reference into the contracts. All naval vessel procurement contracts, and all
21 specifications for the construction of naval vessels, are both fully inclusive and fully exclusive. This
22 means that, unless the United States Government approves otherwise, Lockheed Shipbuilding
23 Company always was required to do everything called for in the contract and specifications and always
24 was prohibited from modifying the design or materials called for in the contract and specifications.
25 Further, these government procurement contracts mandated that delivery to, and acceptance by, the
26 United States Government of naval vessels be contingent upon the Government's satisfaction that the

1 vessels were in fact constructed in strict compliance with all specifications and contract terms.

2 4. Attached hereto as *Exhibit A* is a true and correct copy of contract number
3 N00024-75-C-2025, dated November 20, 1974, for the construction of AS 39 and AS 40. This
4 contract mandated that Lockheed Shipbuilding Company (under its prior name, Lockheed
5 Shipbuilding and Construction Company) construct the AS 39 and AS 40 (i.e., USS EMORY
6 LAND and USS FRANK CABLE, respectively) in strict compliance with multiple Navy-issued
7 specifications referenced in Section F of the contract, and made delivery and acceptance of the
8 AS 39 and AS 40 contingent upon full compliance with all such specifications (see sections H, I,
9 and L of the Contract). Further, this contract, like many government procurement contracts,
10 also mandated Lockheed Shipbuilding Company to install Government Furnished Material
11 (“GFM”) into the AS 39 and AS 40. GFM is material that the Government selects, procures,
12 and furnishes to the build contractor (here, Lockheed Shipbuilding and Construction Company)
13 for installation into the military vessel. Attached hereto as *Exhibit B* is a true and correct copy
14 of Schedule “A” entitled, List of Government Furnished Material For Submarine Tenders AS
15 39/40 and dated February 23, 1973. Schedule A and its accompanying appendices demonstrate
16 that the Government selected, procured, and furnished hundreds of items to Lockheed
17 Shipbuilding Company for installation into the AS 39 and AS 40.

18 5. Attached hereto as *Exhibit C* is copy of contract number N00024-77-C-2067,
19 dated April 29, 1977, for the construction of AS 41. This contract mandated that Lockheed
20 Shipbuilding Company (under its prior name, Lockheed Shipbuilding and Construction
21 Company) construct the AS 41 (i.e., USS McKee) in strict compliance with multiple Navy-
22 issued specifications referenced in Section F of the contract. This contract also made delivery
23 and acceptance of the AS 41 contingent upon full compliance with all such specifications (see
24 sections H, I, and L of the Contract).

25 6. Lockheed Shipbuilding Company constructed the AS 39, AS 40, and AS 41 in
26 strict compliance with the Navy-issued specifications, and all other requirements and

1 specifications identified in the contracts, including subsequent specification modifications.

2 7. Attached hereto as **Exhibit D** is a true and correct copy of a written
3 communication sent from the Department of the Navy, Supervisor of Shipbuilding, Conversion
4 and Repair, 13th Naval District, to Lockheed Shipbuilding Company. This document reflects the
5 procedure for correcting items noted following Acceptance Trials to ensure that naval vessels
6 fully complied with all contract terms and specifications before the United States Navy accepted
7 delivery from Lockheed Shipbuilding Company. Attached hereto as **Exhibit E** is a true and
8 correct copy of an interdepartmental communication dated March 17, 1969. This document
9 provides a report on the Final Acceptance Trials for a vessel built by Lockheed Shipbuilding
10 Company for the United States Navy, which reflects the steps taken to assure compliance with
11 the Government's requirements and specifications.

12 I declare under penalty of perjury under the laws of the United States of America that the
13 foregoing is true and correct.

14 Dated this 10th day of April, 2011, at Moorestown, New Jersey.

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18 Peter D. Balch
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